

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

CHRISTIAN GILBERT TONY NADAL,

Plaintiff,

vs.

NAOMI TSUMA, FAA counsel, et al.,

Defendants.

MEMORANDUM DECISION AND
ORDER ADOPTING REPORT AND
RECOMMENDATION AND
DISMISSING CASE WITHOUT
PREJUDICE

Case No. 2:07-CV-338 TS

This matter is before the Court for review of the Magistrate Judge's November 26, 2008 Report & Recommendation. In a thorough and detailed 12-page Report and Recommendation, the Magistrate set forth the reasons why service of process was insufficient, why leave to amend would be futile, and recommended dismissal for the failure to timely serve the Defendants.¹

The Report and Recommendation notified Plaintiff he had ten days to file an objection to the Report and Recommendation and that the failure to file an objection may

¹Docket No. 13.

constitute waiver of those objections on appellate review. Plaintiff has not filed any objection.

If, as in this case, there is no objection to the Report and Recommendation, the Court applies the “clearly erroneous” standard.² Under the clearly erroneous standard, this Court will affirm the Magistrate Judge’s ruling “unless it ‘on the entire evidence is left with the definite and firm conviction that a mistake has been committed.’”³

Having reviewed the Report & Recommendation, the Court finds it correctly states the applicable law. The Magistrate Judge’s findings of fact are fully supported by the record. Applying the same legal standards as did the Magistrate Judge, the Court agrees that Plaintiff failed to timely serve Defendants and that leave to amend would be futile.

Further, having reviewed the Complaint and the record, the Court finds that it would reach the same conclusion under de novo review. Accordingly, it is therefore

ORDERED that the Magistrate Judge’s Report and Recommendation (Docket No. 12) is ADOPTED IN FULL. It is further

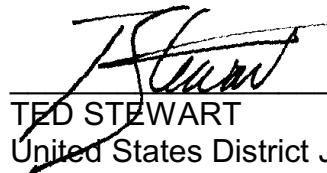
²28 U.S.C. § 636(b)(1) (requiring de novo review of only “those portions of the report or specified proposed findings or recommendations to which objection is made”) and Fed. R. Civ. P. 72(b) (3) (same).

³*Ocelot Oil Corp. v. Sparrow Industries*, 847 F.2d 1458, 1464 (10th Cir. 1988) (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)).

ORDERED that Plaintiff's Complaint is DISMISSED WITHOUT PREJUDICE under Fed. R. Civ. P 4(m) for failure to timely serve Defendants.

DATED January 12, 2009.

BY THE COURT:



TED STEWART
United States District Judge